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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

MR. & MRS. DEAN HINDMAN,)	
)	
Appellants,)	SHB No. 90-67
)	
v.)	
)	
STATE OF WASHINGTON, DEPARTMENT OF)	FINAL FINDINGS OF FACT,
ECOLOGY and DONALD BIRD,)	CONCLUSIONS OF LAW
)	AND ORDER
Respondents.)	
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This matter came on for hearing on November 5, 1991 in Grayland, Washington, Grays Harbor County, before the Shorelines Hearings Board, Harold S. Zimmerman, Chair, presiding with Board members, Nancy Burnett, Annette S. McGee, and Jon Wagner in attendance, and with John H. Buckwalter as legal advisor.

At issue was a request for review of a shoreline substantial development permit granted by Grays Harbor County for the improvement of an access road which passes through certain wetlands.

Appearances were:

Dean Hindman, appellant, pro se.

Stephen P. Natwick, Attorney at Law, for respondent,

Donald Bird.

Proceedings were recorded by Betty Koharski of Gene Barker Associates and were also taped. The site was visited by the Board,

1 witnesses were sworn and testified, and exhibits were examined. From
2 these, the Board makes these

3 FINDINGS OF FACT

4 I

5 The property of Respondent Donald Bird which is the site of the
6 matter in question is located approximately 1500 feet west of highway
7 SR 105 in Grayland, Grays Harbor County, and lies within the
8 shorelines and associated wetlands of the Pacific Ocean. The area is
9 designated by the Grays Harbor Management Master Program as Ocean
10 Beach Environment which permits single family residences and
11 associated uses and structures. Vehicular access is by one road only.

12 II

13 On or about June 20, 1990, respondent Donald Bird submitted an
14 application for a shoreline substantial development permit to the
15 Grays Harbor County Planning and Building Department for the
16 construction of a single family residence, septic tank, drainfield
17 and utilities and for an all-weather access road from S.R. 105
18 westward to the proposed residence.

19 III

20 Subsequently, Mr. Bird was informed by the Planning and Building
21 Department that the proposed residence was exempt from the requirement
22 for a substantial development permit (WAC 173-14-040) but that the
23 exemption did not apply to construction of the proposed access road.

1 The residence was built and completed in 1991. Work on the access
2 road is delayed pending final action on the permit.

3 IV

4 On August 9, 1990 the Planning and Building Department issued a
5 SEPA determination of nonsignificance for Mr. Bird's application. On
6 September 9, 1990, after meeting all procedural requirements, the
7 Department granted Substantial Development Permit SMA 90-71
8 authorizing the improvement of the present access road. It is the
9 issuance of this permit which was timely appealed to the Board by
10 Appellants Mr. and Mrs. Hindman.

11 V

12 The access road which is to be improved is approximately 10 feet
13 wide and extends west from highway SR 105 to Mr. Bird's residence.
14 The road passes first over an easement of approximately 750 feet
15 through the property of Mr. and Mrs. Hindman to a marked meander line,
16 and then for approximately another 750 feet over an easement through
17 what is now the property of Mr. G.L. Blanchard lying adjacent to the
18 south of Mr. Bird's property. The road has existed in its present
19 configuration since approximately 1959. Mr. Blanchard and Mr. Bird
20 have reached an agreement that Mr. Bird may continue to use the
21 Blanchard portion of the road for three more years during which time
22 Mr. Bird is to construct a new access road through his own property.

1 VI

2 The road is predominantly compacted sand with some light gravel
3 at intermittent spots and, westerly from SR 105, traverses first a
4 secondary dune, then passes through a deflation plain of wetlands to a
5 primary dune on which Mr. Bird's residence is located.

6 VII

7 The wetlands through which the road passes are drained by one
8 creek to the north and by another creek to the south, both of which
9 flow westerly to the ocean. However, this drainage is inadequate
10 during rainy seasons and large amounts of ground water accumulate at a
11 number of places on the road making it difficult or even impossible to
12 drive through and prohibiting the entrance of fire equipment.

13 VIII

14 Mr. Bird plans to improve the access road, as authorized by the
15 permit, by adding rock and gravel and widening it to 12 feet, using
16 approximately 450 c.y. of rock and sand fill over the old road. This
17 will raise the road level by 2 1/2 to 3 feet for the purpose of
18 reducing flooding of the roadway and will provide an all weather
19 surface which will permit the access of fire equipment. In order to
20 maintain present north/south drainage patterns three 18-inch culverts
21 are to be installed under the road at 200 foot intervals through the
22 deflation plain thus minimizing any unnatural buildup of water on
23 either side of the road.

The deflation plain at the site consists of a scrub-shrub wetland, dominated by coast willow and undergrowth predominantly of Lingby's sedge. Widening of the road from 10 to 12 feet will remove approximately one foot of vegetation from each side for the length of the road.

X

Wildlife in the plain consists of water fowl, songbirds, some pheasants, and some trace of deer. The amount of animal life in the plain has decreased over the past years due to population and use growth in the area.

XI

As a condition of the permit, Mr. Bird has dedicated or will dedicate to Grays Harbor County an easement across the eastern 60 feet of his property for the construction of a north-south access road. Upon completion of the road Mr. Bird, at his expense, will remove the portion of the present access road which lies within the wet lands.

XII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact the Board makes these

CONCLUSIONS OF LAW

I

This Board has jurisdiction over the parties and subject matter of this action. RCW 90.58.180.

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II

It is public policy to prevent landlocked property from becoming useless. Olive v. Rasmusso, 48 Wn App. 318,321 (1987). Since the present road is Mr. Bird's only vehicular access to his residence, until and unless a new and different access road is built, modification of the old road is necessary not only for Mr. Bird's convenience but to provide the road conditions which are required by the Uniform Fire Code (UFC), Article 10, Section 10.207, for fire equipment access.

III

The 2 1/2 to 3 foot elevation of the road by rock and gravel over the old road is necessary to provide the all-weather surface required by the UFC. While the elevated road could interfere with the normal drainage in the area from north to south or vice versa, the Board concludes that placement of three culverts in the deflation plain will satisfactorily minimize such interference.

IV

The UFC requires that fire equipment access roads be a minimum of 20 feet wide. However, the Code also provides for exceptions to this requirement. The Board concludes that the reduction to a 12 foot width, while an increase over the present 10 feet, will cause minimal damage or disturbance to either the vegetation or the wild life in the area.

Appellants indicated in their notice of appeal dated October 15, 1990, that they were particularly concerned about the road modification authorized by SMA 90-71 for three reasons: alteration of the existing road is not needed, detriment to the wildlife of the area will result, and there will be further adverse effects on flooding in the area. The Board concludes that the ecological and flooding effects on the wetlands involved will be minimal and that the Appellants have not met their burden of proof to show otherwise. The Board further concludes that, in weighing the minimal effects on the area ecology against Respondent's need for fire protection public policy dictates that the superior weight must be given to the latter.

VI

We are concerned, however, by the stated intention of Mr. Bird to build a new portion of access road on his own property, thereafter vacating the portion which now lies on the Blanchard property. The Board concludes that permit SMA 90-71 authorizes work only on the "old" road, that construction of a new road could cause excessive and unacceptable damage to the wetlands, that SMA 90-71 shall not be amended or converted in any way to permit the construction of a new road or portion thereof, and that any such construction requires the issuance of an entirely new and different permit following all

1 statutory and regulatory requirements for the processing and approval
2 of such permits.

3 VI

4 Any Finding of Fact deemed to be a Conclusion of Law is hereby
5 adopted as such. From these Conclusions of Law, the Board enters this
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ORDER

Substantial Development Permit SMA 90-71 at issue herein is remanded to Grays Harbor County for reissuance in the same form as previously issued, provided that the following fourth term and condition shall be added to the three already imposed as stated on page two of said permit:

4. This permit authorizes only the modification of the present access road. Any new road or the movement of any portion of the present road will require another and different substantial development permit.

With this added condition, the permit is affirmed.

DONE this 3rd day of December, 1991.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Annette S. McGee
ANNETTE S. M^CGEE, Member

Nancy Burnett
NANCY BURNETT, Member

Jon Wagner
JON WAGNER, Member

John H. Buckwalter
JOHN H. BUCKWALTER
Administrative Appeals Judge

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB No. 90-67